

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs.

5:20-cr-243

DENNIS J. NELSON,

Defendant.
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**TRANSCRIPT OF COMPETENCY HEARING
BEFORE THE HONORABLE MARIAN W. PAYSON**
May 5, 2022
100 South Clinton Street, Syracuse, NY

APPEARANCES

For Government:

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1 (1:28 p.m.)

2 THE CLERK: Case is United States versus Dennis
3 Nelson, 20-cr-243. Counsel, please note your appearances for
4 the record.

5 MR. EURENIUS: Carl Eurenium for the United States.
6 Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MS. BIANCO: Good afternoon, Your Honor. Randi
9 Bianco for Dennis Nelson, who is seated at my right. My IT
10 person is behind me.

11 THE COURT: Nice to see you both in person. I
12 don't think I've met either one of you in person. And you
13 are seated next to your client who would like to be addressed
14 as Ms. Nelson, is that correct?

15 THE DEFENDANT: Yeah.

16 THE COURT: Okay, very good.

17 All right. Are both sides prepared to proceed with
18 the competency hearing?

19 MR. EURENIUS: Yes, Your Honor.

20 MS. BIANCO: Yes, Your Honor.

21 THE COURT: Mr. Eurenium.

22 MR. EURENIUS: Judge, the government has one, and
23 only one, witness in this case, it's Dr. Miriam Kissin,
24 forensic psychologist. And should I call her at this time?

25 THE COURT: Yes, please.

Miriam Kissin - Direct - Mr. Eurenium

3

1 MR. EURENIUS: The government calls Miriam Kissin
2 to the stand.

3 THE CLERK: Raise your right hand.

4 MIRIAM KISSIN, called as a witness and being
5 duly sworn, testifies as follows:

6 THE COURT: Good afternoon. You may proceed.

7 DIRECT EXAMINATION BY MR. EURENIUS:

8 Q Dr. Kissin -- can I call you Dr. Kissin?

9 A Yes.

10 Q Good afternoon, Dr. Kissin. How are you employed?

11 A I'm a forensic psychologist for the Federal Bureau of
12 Prisons at the Federal Medical Center Devens.

13 Q Where is the Federal Medical Center Devens?

14 A It's in Devens, Massachusetts.

15 Q How long have you been a forensic psychologist there?

16 A At Devens, I've been there for 13 years.

17 Q And how long have you been with BOP?

18 A 13 years.

19 Q Now, Dr. Kissin, what is your -- you're a forensic
20 psychologist?

21 A Yes.

22 Q And in this case were you referred for an evaluation of
23 the defendant, Dennis Nelson?

24 A Yes.

25 Q And were you referred that as a result of an order from

1 this court?

2 A I was, yes.

3 Q And did you conduct a psychological evaluation of
4 defendant Dennis Nelson?

5 A I did.

6 Q And did you -- in your expert opinion did you reach a
7 diagnosis about the psychological condition of Dennis Nelson?

8 A I did.

9 Q Relative to the defendant's competency to stand trial in
10 this matter?

11 A Yes. In the course of that evaluation, yes.

12 Q And what was that diagnosis?

13 A My diagnosis was mixed personality disorder with
14 antisocial and borderline features, and borderline
15 intellectual functioning.

16 Q And to reach that conclusion, the evaluation of the
17 defendant, did that include a number of things including
18 reviewing the materials provided by the government and the
19 defense?

20 A Yes.

21 Q And are your conclusions and your opinion contained in a
22 report?

23 A They are.

24 Q And that report has been issued to the Court, is that
25 correct?

Miriam Kissin - Direct - Mr. Eurenium

5

1 A Yes, correct.

2 MR. EURENIUS: One moment, Your Honor.

3 THE COURT: Yes.

4 MR. EURENIUS: Judge, the report is marked as
5 Defendant's Exhibit 10, and I would -- the government has no
6 objection to the admission of the Doctor's report in this
7 regard.

8 THE COURT: The report shall be admitted
9 Defendant's Exhibit 10.

10 (Defendant's Exhibit 10 received in evidence.)

11 MR. EURENIUS: The report that is -- if I might
12 have a discussion at sidebar regarding the addendum to the
13 report?

14 THE COURT: Okay. I'm not talking about the
15 addendum.

16 MR. EURENIUS: Yes, Your Honor, okay. The
17 government has no objection to the admission of the report
18 itself.

19 Q Now, Doctor, in your expert opinion, did you reach a
20 conclusion regarding the defendant's competency to stand
21 trial?

22 A I did.

23 Q And what is that?

24 A I opined that Ms. Nelson does not suffer from mental
25 illness or mental defect that interferes with her ability to

1 participate in the legal process to understand the charges
2 against her or her capacity to work with her attorney in her
3 defense.

4 MR. EURENIUS: Thank you. No further questions.

5 THE COURT: Ms. Bianco.

6 MS. BIANCO: Your Honor, may I use the podium?

7 THE COURT: Yes.

8 MS. BIANCO: Can I take my mask off during my
9 questioning?

10 THE COURT: Let me ask the ladies in the front of
11 the bench. Yes, you may.

12 *CROSS-EXAMINATION BY MS. BIANCO:*

13 Q Good afternoon, Dr. Kissin.

14 A Good afternoon.

15 Q Would you agree that Dennis Nelson is an unreliable
16 historian of her history?

17 A I'm not sure I would necessarily qualify it fully like
18 that, maybe inconsistent at times. I wouldn't go that far.

19 Q In the past she has been evaluated by mental health
20 officials at the Bureau of Prisons, correct?

21 A Correct.

22 Q And showing you Defendant's Exhibit 8, she has been
23 classified in the past as an unreliable historian, is that
24 correct?

25 A I'm not sure -- I'm sorry, it's in front of me.

Miriam Kissin - Cross - Ms. Bianco

7

1 Q Presented as a poor historian?

2 A So this is not -- what I'm looking at is New York State,
3 not a bureau.

4 Q I'm sorry, the Office of Mental Health.

5 A Correct. So that's not the previous evaluation. Bureau
6 looks like that's records from New York State Department of
7 Corrections or something of that matter. And it does say
8 there that this evaluator or that interviewer did find that
9 to be the case, presented as a poor historian, I do see that.

10 Q Do you think she was a poor historian or do you think
11 she's an accurate historian?

12 A Are you talking about in this particular matter?

13 Q In this particular matter.

14 A I wasn't present during that evaluation, I couldn't
15 really opine. But in terms of my evaluation?

16 Q Yes.

17 A The information that she presented was overall
18 consistent with previous reports or previous evaluations that
19 I received in terms of her mental health history, history of
20 incarceration, childhood history. Again, there wasn't
21 anything significantly inconsistent. I think there were
22 things that she didn't necessarily say that she might have
23 reported previously but they were not necessarily in contrast
24 to other information.

25 Q So you're saying she's an accurate historian?

1 A I did not find her to be inaccurate based on previous
2 information.

3 Q You wanted to verify her history through other sources,
4 is that correct?

5 A That is one of the things that I did do, correct.

6 Q And in the course of your examination, you reviewed a
7 number of documents, correct?

8 A Correct.

9 Q And that included medical records from the New York
10 State Office of Mental Health?

11 A Yes.

12 Q It included medical records from the Department of
13 Corrections?

14 A Yes. A variety from New York State, yes.

15 Q Medical records from the Bureau of Prisons?

16 A Yes.

17 Q Discovery materials in this case?

18 A Yes.

19 Q And you received materials from my office, the Office of
20 the Federal Public Defender, consisting of her records of
21 previous state and federal cases, correct?

22 A Yes.

23 Q And she had numerous arrests for sending threatening
24 letters?

25 A I believe that's the case, yes.

1 Q And you reviewed Ms. Nelson's prior behavior in all
2 those arrests?

3 A I did not review her behavior in those arrests. I did
4 review the mental health records. I'm not sure -- I did not
5 review the court records or discovery for previous arrests.

6 Q So the records that the Federal Public Defender's Office
7 sent you with regards to her previous threatening letters,
8 you didn't review any of that?

9 A You asked me if I reviewed her behavior at arrests. So
10 I don't recall reviewing specific arrest information, so
11 police department or marshals, in terms of behavior at
12 arrests, but I did review previous information that included
13 previous charges of sending threatening letters.

14 Q Okay. So you reviewed all of the materials the Federal
15 Public Defender's Office sent you?

16 A Yes, correct.

17 THE COURT: Can I just interrupt you to ask the
18 folks in the gallery to please keep their masks on. Anyone
19 in the gallery, please put a mask on. Thank you. Go ahead.

20 Q Dennis Nelson has received psychiatric care for the
21 majority of her life, is that right?

22 A Yes.

23 Q And you were aware that an MRI was performed in 1991
24 that showed left brain hypoplasia? I'm showing you
25 Exhibit 2.

1 A Yes, correct.

2 Q And that means she had an underdeveloped left hemisphere
3 of her brain, is that right?

4 A I believe that's what that means. I'm not a physician
5 but that's my understanding based on other records where that
6 was more fully explained, yes.

7 Q And the left hemisphere is where speech and language are
8 processed, correct?

9 A For the most part.

10 Q And you're aware of her educational background, correct?

11 A Yes.

12 Q And she claims she left school after being expelled in
13 the fifth grade?

14 A Correct.

15 Q Right. And are you saying that she was an accurate
16 historian, that she only completed a fifth grade education,
17 or did you find records that contrasted that?

18 A I'm not exactly sure. I do believe that there was
19 significant limitations. She was institutionalized for many
20 years and there was significant limitations in terms of
21 completing school, but I did not delve into school records
22 specifically so I'm not sure if that's exactly accurate,
23 whether it's fifth grade or another grade, but I believe that
24 several records indicated that she did not complete her
25 education.

1 Q When you say "did not complete her education," did not
2 complete high school or did not complete elementary school?

3 A Again, so I believe that she told me that it was through
4 fifth grade. I would have to check my -- I don't recall
5 exactly but I know that she did tell me that she did not
6 complete her education and that she might have some
7 difficulty around literacy because of that.

8 Q And you reviewed her previous scores on IQ testing,
9 correct?

10 A Correct.

11 Q Okay. And her last IQ test was given in 1992, is that
12 right?

13 A Again, I'm not sure exactly. I know there was previous
14 testing, I'm not sure of the years but I do recall that there
15 were previous.

16 Q Showing you Defendant's Exhibit 11, did you review that
17 particular document, her IQ test?

18 A There were about 6 inches of records I did review. I'm
19 not quite sure if that was the last that was given but I do
20 recall that there was reviewing previous evaluations of which
21 this was one.

22 Q And she had a full scale IQ of 76, is that right?

23 A Yes.

24 Q And a verbal IQ of 72?

25 A Correct.

Miriam Kissin - Cross - Ms. Bianco

12

1 Q Okay. And you agree that Dennis presents with cognitive
2 functioning -- excuse me. You agree that Dennis presents,
3 cognitive functioning appeared consistent with previously
4 reported scores in the borderline range?

5 A Yes, that would be in the borderline range.

6 Q And her concrete functioning is limiting?

7 A I'm sorry, her what functioning?

8 Q Her concrete functioning is limited, you said that,
9 correct?

10 A It should have said cognitive. Maybe that's a typo, I'm
11 not sure.

12 Q Okay, Exhibit 10, page 10, please.

13 A Is that my report?

14 Q Your report.

15 A Cognitive functioning is what my report says.

16 Q I apologize. So her cognitive functioning is limited?

17 A Correct.

18 Q And when you reviewed her IQ assessment -- you said you
19 did review that, correct?

20 A Yes. I believe there were several times of testing but
21 that may have been one of the last ones.

22 Q And it took her five sessions to complete the test which
23 is frequently accomplished in just one session, Exhibit 11,
24 page 3, please?

25 A That is what that says, correct.

1 Q Okay. And have you ever done IQ tests?

2 A I have.

3 Q And usually it's completed in one session, right?

4 A Certainly not in our setting.

5 Q And that's because you are in a setting with people who
6 have psychiatric illnesses, correct?

7 A There is a lot of limitations, time issues. I mean,
8 it's a secure setting with a very structured day and
9 sometimes that has to do with the individual's difficulty
10 managing a long test. Some of it might have to do with time
11 constraints that are more institutional. It's more likely
12 than not that testing can take several attempts, not just
13 one.

14 Q But for a person who has a normal cognitive functioning,
15 usually it's done in one setting, correct?

16 A It certainly can be done. The test is geared that it's
17 able to be accomplished within one setting.

18 Q In this particular instance, Exhibit 11, page 2, the
19 reason there were five different sessions is because she kept
20 terminating the sessions, is that right?

21 A I don't know. Again, I was not a party to that testing
22 session but that appears that's what it says in the document.

23 Q And this is records that you had reviewed?

24 A Yes.

25 Q Okay. And each time they asked her to expand on the

1 answers, she terminated the session, is that right? And I'm
2 referring back to that same Exhibit 11, page 2.

3 A That is what it says.

4 Q Okay. Dennis has a history of not being cooperative
5 with authorities, would that be a fair statement?

6 A I would say that, yes, there is definitely a history
7 consistent with that.

8 Q And she has been diagnosed in the past with mental
9 disease or defect as defined by the Diagnostic and
10 Statistical Manual of Mental Disorders, correct?

11 A I think what you're asking is has she had previously
12 been diagnosed with mental health issues.

13 Q Yes.

14 A Yes, certainly.

15 Q And the Diagnostic and Statistical Manual of Mental
16 Disorders, that's known as the DSM, correct?

17 A Correct.

18 Q Let's talk about her previous diagnoses for mental
19 disease or defects, okay?

20 A Okay.

21 Q You said you diagnosed her with a borderline
22 personality, correct?

23 A Yes.

24 Q Would you agree that personality disorders are
25 considered mental disorders of unclear etiology that impair

1 the individual in a pervasive way with respect to their
2 perceptions, managements of feelings, and functioning of
3 major life spheres, such as relationships and work, et
4 cetera? Would you agree with that statement?

5 A The first I would for the most part. I think some of
6 them we do have some sense of what might contribute to them,
7 but, yes, overall their personality disorders are manifested
8 problems with interpersonally and with one's social setting.

9 Q Let's talk about delusional disorders, okay? Dennis was
10 diagnosed with a delusional disorder when she arrived at
11 Devens in December of 2020, correct?

12 A I believe that that was the diagnosis that was -- that
13 had been in the records. I'm not sure -- actually, I guess
14 I'm not sure, that might have been in the records but I'm not
15 sure about that diagnosis, where that came from.

16 Q Well, showing you Exhibit 4 dated 12/16/2020, where it
17 has a brief psychiatric history, do you see that? And the
18 psychiatrist diagnosis includes delusional disorder, mixed
19 type, with grandiose and somatic delusions, do you see that?

20 A Yes. I think my point is not that that wasn't in the
21 records, but I'm not clear that that was the diagnosis that
22 came from Devens at the time that she arrived or that was the
23 psychiatrist, Dr. Kennedy, our psychiatrist, took from
24 records that were available at the time that she came into
25 Devens.

1 Q But during your evaluation she continued to receive
2 treatment from her provider for the diagnosis of delusional
3 disorder, correct?

4 A Um --

5 Q And your report, Exhibit 10, at page 6, don't you say
6 that?

7 A So she received antipsychotic medications that she's
8 been on for a long time, that's correct.

9 Q Well, did you say that she was receiving treatment from
10 her provider for a diagnosis of delusional disorder?

11 A Yes. That is what the psychiatric diagnosis in the
12 records is and she was on antipsychotic medication.

13 Q And her diagnosis was delusional disorder, mixed type,
14 grandiose, and somatic delusions, correct, and that was in
15 December of 2020?

16 A Yes.

17 Q And she had a history of prior mental health treatment
18 which included psychotropic medications, emergency room
19 treatment, and numerous inpatient hospitalizations, correct?

20 A Yes.

21 Q Let's talk about the essential features for delusional
22 disorders under the DSM. You're familiar with that, correct?

23 A I am.

24 Q So, you need to have the presence of one or more
25 delusions that persist for at least one month or longer,

1 correct?

2 A Correct.

3 Q The Criterion A for schizophrenia has never been met,
4 that's another essential feature?

5 A Correct.

6 Q Apart from the impact of the delusions or its
7 ramifications, functioning is not markedly impaired and the
8 behavior is not obviously bizarre or odd, correct?

9 A Correct.

10 Q If manic or major episodes have occurred, they have been
11 brief relative to the duration of the delusional period,
12 correct?

13 A Correct.

14 Q The disturbance is not attributable to the physiological
15 effects of a substance, like cocaine, or another medical
16 condition, like Alzheimer's, and is not better explained by
17 another mental disorder, correct?

18 A Correct.

19 Q And you agree that delusions come and go and cannot be
20 predicted?

21 A It really varies. Some people have very stationary
22 delusions, some delusions change. I would not say that
23 that's an accurate statement about delusions coming and
24 going.

25 Q When you say stationary, do you mean they're delusional

1 all the time, 24 hours a day, seven days a week?

2 A So, there are individuals that have specific delusional
3 beliefs that are always present. That doesn't mean that they
4 are necessarily always thinking about them or might be
5 sharing them with an individual, but the belief that system,
6 that part of the delusional system is present.

7 Q So, the delusion would be always present but they're not
8 speaking about it, is that what you're saying?

9 A If I may give an example. Someone might believe that
10 they are somebody famous, they might believe that they are a
11 famous individual, famous singer, where in fact all evidence
12 does not point to that, and so they may always believe that
13 that is true, that is their identity. That is not true based
14 on sort of our shared understanding of the world, but they
15 may always feel that. And if asked that, they will share
16 that or sometimes offer that if not asked, but they also can
17 go about their day, they can eat, they can sleep, they can
18 manage financial matters, but that belief is present.

19 Q So, that belief would be part of their persona, the
20 delusion, correct?

21 A Correct.

22 Q There are also associated features that support a
23 diagnosis of delusional disorder, correct?

24 A Well, if you may ask it specifically.

25 Q According to the DSM there are associated features that

1 support a diagnosis of delusional disorder, such as,
2 "Individuals with delusional disorder may be able to
3 factually describe that others view their beliefs as
4 irrational but are unable to accept this themselves." Is
5 that what the DSM says about associated features with the
6 diagnosis?

7 A That can happen, yes. That is something that can happen
8 within individuals with delusional disorders.

9 Q And individuals with delusional disorders, there may be
10 factual insight but not true insight, correct?

11 A If that's characterizing your previous example, I would
12 agree with that, that someone might.

13 Q Well, that's what the DSM says, is that right?

14 A Yes. It's basically speaking to what you just earlier
15 gave an example of.

16 Q Another associated feature that supports the diagnosis
17 of delusional disorder is legal difficulties, correct?

18 A That can occur, yes, certainly.

19 Q Now, here Dennis was being treated for his delusions
20 with the medication Geodon. You're familiar with that,
21 correct?

22 A Geodon yes.

23 Q And he received 80 milligrams twice her day, correct?

24 A That is what it says, yes.

25 Q And Geodon is an antipsychotic, correct?

Miriam Kissin - Cross - Ms. Bianco

20

1 A Yes.

2 Q And 80 milligrams twice a day is the maximum dose a
3 person can be on?

4 A I don't know. I'm not a physician, I'm not clear about
5 dosages, but if that's -- if that's the information that you
6 have, I don't have a reason to --

7 Q You don't know one way or another?

8 A I do not know. I don't prescribe medication, I'm a
9 psychologist, so I'm not clear about the maximum dose of
10 Geodon.

11 Q But Geodon is a prescription medication used to treat
12 the symptoms of schizophrenia, acute agitation with
13 schizophrenia, and bipolar 1 disorder, is that right?

14 A It's an antipsychotic disorder that can be used for all
15 of those things, correct.

16 THE COURT: Antipsychotic medication.

17 THE WITNESS: Sorry, yes, it's an antipsychotic
18 medication used to treat all those disorders.

19 Q And it can help decrease hallucinations, correct?

20 A It can, yes.

21 Q Obviously, you said you're not a medical doctor so you
22 didn't describe Geodon to Dennis?

23 A Correct.

24 Q So some psychiatrist in the Bureau of Prisons prescribed
25 that to Dennis?

1 A The psychiatrist at Devens prescribed that.

2 Q And the Geodon has decreased the frequency and severity
3 of Dennis' behavioral and adjustment problems, correct?

4 A Antipsychotics often alter behavioral disturbances as
5 well.

6 THE COURT: The question is with respect to the
7 defendant here.

8 Q Yes?

9 A Yes. And so that's just to clarify why an antipsychotic
10 might do that, yes, that does seem what happened with
11 Ms. Dennis and by her own account as well.

12 Q And you have reviewed all the records and know that
13 Dennis is not always compliant with his medications, correct?

14 A I believe that's been true in the past, yes.

15 Q Okay. So if he stopped taking the Geodon, his psychoses
16 or delusions could readily appear, correct?

17 A I'm not -- again, I don't -- based on my evaluation and
18 my review, I am not clear that Ms. Dennis ever presented with
19 actual hallucinations or delusions. I believe that she's
20 given relatively vague accounts of those things. The most
21 prominent features have been more behavioral, and the Geodon
22 has again by record review, by my own observation, and by her
23 own account helped to manage some of those behavioral
24 problems that she's had consistently.

25 Q Well, this wasn't the first time that she had been put

1 on an antipsychotic, correct?

2 A Correct.

3 Q She's been put on lots of antipsychotics in the past, is
4 that right?

5 A That's correct.

6 Q Let's talk about some of Dennis' delusions that are
7 documented in the medical records. In December of 2020
8 Dennis claimed to be worth over \$40 billion, is that right?

9 A Yes.

10 Q In December of 2020 Dennis claimed to be the leader of
11 the Latin Kings, which is a prison gang, correct?

12 A Correct.

13 Q And that's a delusion?

14 A Well, it's a statement that she made that could be part
15 of someone's delusion. I did not diagnoses it as a delusion,
16 but that she did make those statements, that's correct.

17 Q So, she's making those statements and you don't know
18 whether she was delusional when she made them or not?

19 A Well, she has indicated that she does not believe those
20 things to be true.

21 Q Okay. And she indicated each one of those statements
22 were not true to you?

23 A Yes.

24 Q Where in your report does it say that she said none of
25 those statements are true? Can you tell us the page number?

1 A I'm not clear that I put it in my report. I did say in
2 my report that she's provided inconsistent statements about
3 those things, and the inconsistency being not just to myself
4 but to other providers sometimes she has said those things
5 and other times she has not said that those things are true.

6 Q Just to be clear, it's not in your report that she said
7 none of these things were true, correct?

8 A She did not tell me that those are truth about her. She
9 did not indicate to me that she is the leader of the Latin
10 Kings, nor that she is worth significant amounts of money.

11 Q So, you got that information from records?

12 A No, I got that information from her.

13 Q So, she told you directly she was worth \$40 billion?

14 A She did not tell me that.

15 Q You just said you got the information from her.

16 A She did not tell me that she's worth \$40 billion, nor
17 that she is the leader of the Latin Kings. She did not say
18 that those things are true about her to me. That's not part
19 of the history that she provided to me. That was nowhere in
20 the information that she provided to me. But I do see in the
21 records that she has provided that information to other
22 individuals.

23 Q On December 14, 2020, Exhibit 4, Bureau of Prisons
24 records, that's where she provided that information to a
25 mental health provider at the Bureau of Prisons, correct?

1 A Yes.

2 Q She claimed to be a secret agent, correct?

3 A I believe so, yes.

4 Q She claimed to be a Navy SEAL?

5 A Yes.

6 Q And she also claimed to be a hermaphrodite, correct?

7 A Well, it's complicated. Ms. Nelson has a diagnosis.

8 Q I'm asking you if she claimed to be a hermaphrodite.

9 A I believe so. I think that she refers to her diagnosis
10 as that.

11 Q In December of 2020 she was confronted with the fact
12 that she has normal genitalia. She claimed that she had
13 breast and internal female organs. That was in December of
14 2020, Defendant's Exhibit 4, is that right?

15 A Um, correct, she said that.

16 Q She does not have internal female organs, is that right?

17 A I do not know exactly about her internal. I don't
18 believe that she has internal female organs but she does have
19 a sex chromosome disorder.

20 Q But in terms of having internal female organs, if she
21 said she had internal female organs, that would be a
22 delusion, correct?

23 A Well, that would be wrong, yes.

24 Q Okay. The medical professional that saw her on
25 December 20th said that she is inconsistent with these claims

1 and is felt to have no insight into her delusions. And
2 that's Defendant's Exhibit 4. Do you see that?

3 A Uh-huh, yes, I do.

4 Q Are you disagreeing that she has delusions at all?

5 A I do not disagree that she makes statements that are not
6 factual, she makes them inconsistently and she often detracts
7 them later.

8 Q My question to you is, are you saying that she does not
9 suffer from delusions?

10 A I do not believe that this is part of a delusional
11 system.

12 Q So, the psychiatrist who wrote this report, it would be
13 incorrect when he said she has no insight into her delusions?

14 A That would be Dr. James Kennedy, our psychiatrist. I do
15 not agree with that diagnosis, correct.

16 Q But that is a diagnosis from a psychiatrist?

17 A That is Dr. Kennedy's diagnosis.

18 Q Okay. Let's look at her behavior in the present
19 charges. You reviewed her threat letters from August 1st,
20 2018, July 5th, 2019 and July 15, 2019, is that correct?

21 A I reviewed the discovery for purposes of the competency
22 evaluation, correct.

23 Q Showing you Defendant's Exhibit 12, this is where she
24 wrote a letter with a bomb threat to Judge McAvoy, correct?

25 A That is the allegation, correct.

1 Q And you reviewed that letter, correct?

2 A Yes. It was part of the discovery, correct.

3 Q And she claimed to have a Muslim brotherhood who could
4 assist her in carrying out a bomb threat, correct?

5 A That is what that says, yes, correct.

6 Q That could be considered a delusion, right?

7 A Again, this is part of the -- just if you will allow.
8 This was a competency evaluation, so I did not discuss with
9 Ms. Nelson issues related to her behavior in terms of the
10 allegations because this evaluation is particular for the
11 competency, so I don't want to go out of the lane of
12 competency and speak about -- speak about specifically
13 information that she may or may not have given me in terms of
14 behaviors associated with the alleged offense.

15 Q Well, part of the test for competency is to determine if
16 the person suffers from a mental disease or defect, that's
17 the first part of the test, correct?

18 A Yes, correct.

19 Q Okay. And determining whether she has a mental disease
20 or defect, is it your opinion that she does not suffer from a
21 mental disease or defect?

22 A My opinion is that she suffers from personality
23 disorders.

24 Q And not delusional disorders?

25 A That is correct.

1 Q Let's look at the evidence to see if she's suffering
2 from delusional disorders in the records that you reviewed,
3 okay?

4 A Correct.

5 Q So we're going back to the letter to Judge McAvoy where
6 she claimed to have a Muslim brotherhood who could assist her
7 in carrying out a bomb threat. Do you see that?

8 A Yes. That's in front of me, yes.

9 Q And she signed it ISIS Rules, correct?

10 A Again, this is part of the discovery information and,
11 yes, I'm looking at that. I don't think that I could speak
12 to Ms. Nelson's actions in regard to this letter.

13 Q I'm asking you whether a person, we'll do it
14 hypothetically then, a person who wrote a letter like this
15 who says they have a Muslim brotherhood who could assist her
16 in carrying out a bomb threat, signs it ISIS Rules, and the
17 envelope is with her own name it on the return address, is
18 hypothetically speaking a person who wrote a letter like
19 this, could they be considered delusional?

20 A Well, again hypothetically there could be lots of
21 reasons for it. One could be that the person may in fact be
22 part of ISIS. Another one might be that they're trying to be
23 provocative and frightening in their communications, in which
24 case some reference being part of a terrorist group might
25 certainly accomplish that. Another might be that there might

1 some delusional component to it. So there could be multiple
2 reasons why someone might write that letter.

3 Q But one of them could be they're suffering from a
4 delusion, correct?

5 A It could be, yes.

6 Q I would like to show you Exhibit 13, a letter sent
7 7/5/19, from jail to Senator Schumer with a bomb threat.
8 Hypothetically speaking, if a person wrote this letter
9 claiming to be part of ISIS, signed it ISIS Rules, that
10 person could they possibly be suffering from delusions?

11 A I would say it would be the same possibilities as
12 before. So, if it is a letter that is intended to strike
13 fear or terror in the recipient, certainly associating
14 oneself with a known terrorist group, that could be
15 motivation. Again it could be from someone who is actually a
16 believer of ISIS or the philosophy. And theoretically could
17 also be from an individual that might be motivated solely by
18 perhaps some delusional ideas. So all of those things can be
19 the case.

20 Q And you said that you didn't really talk to her about
21 the letters she wrote, that would be outside of your lane, is
22 that right?

23 A That's not exactly what I said. So, for to do a
24 competency evaluation, the most important issue is whether
25 the individual understands the allegations that the

1 government is making against them, not whether or not they
2 did or did not do the action that's alleged. And so I did
3 speak to Ms. Nelson specifically about the letters that she
4 allegedly --

5 Q So you did talk about the letters, yes or no?

6 A Yes. They're part of the discovery and the allegations,
7 correct, that is the crux of the allegations against her.
8 But what she said about the letters and anything potentially
9 incriminating would certainly not be something that I would
10 include in a competency evaluation or testify to because, you
11 know, as I provided my informed consent, that there is, as
12 you know, a firewall between those issues of competency and
13 actual incriminating information.

14 Q Are you saying that you wouldn't write anything
15 incriminating about the letters in your report? Is that what
16 you're saying?

17 A The competency evaluation is not --

18 Q That's a yes or no question.

19 A I am not meant to.

20 Q Let's talk about that same letter, okay. You talked to
21 her about that letter. And I'm going to refer you to page 8
22 of your competency report on Exhibit 10.

23 A Yes.

24 Q Do you see where she says, you write I think, in 1990 --
25 excuse me, "In 2019 that I threatened Chuck Schumer, that I

1 sent powder in a letter, a bomb threat, that'll blow him to
2 pieces." You wrote that, didn't you?

3 A Well, that sentence starts with the DA said I made, and
4 those are excerpts from. So I'm asking her what is the
5 allegation.

6 Q So, the allegation that she's claiming is that she had
7 powder in the letter, correct?

8 A That is one of the things, yes.

9 Q Okay. And you reviewed that actual letter and there is
10 no reference at all about any powder being there, correct?

11 A Well, the letter doesn't have powder. I don't know if
12 there was powder in the letter.

13 Q Exhibit 10 -- Exhibit 13, please. Is there any
14 reference that there is powder in the letter?

15 A Ms. Nelson did not tell me she referenced powder, she
16 said that she put powder in the letter.

17 Q You were just saying that the DA, she was only talking
18 about what the DA told her, correct?

19 A She told me what the allegations against her are, and so
20 she added besides writing a letter, she said that there was
21 also an allegation of there being a powder, or she believed
22 there was an allegation of powder. Whether or not in fact
23 there was powder found I'm not aware of. But she did not say
24 that she wrote a letter saying that there was powder. Just
25 maybe I wasn't clear. She said that there is an allegation

1 that she put powder in the letter. Again, I don't know if
2 powder was found.

3 Q So, if that allegation about powder in a letter was not
4 true, she doesn't have a complete factual understanding of
5 this particular charge with this letter, correct?

6 A Well, I guess that particular piece that there was
7 powder was something that she believed might be part of the
8 charge, but I'm not aware of --

9 THE COURT: Let her finish.

10 Q Sorry.

11 A She believed that there was a piece of a charge -- she
12 was able to talk about what the charges were and she added a
13 piece, which was the powder, that I don't see in the actual
14 allegations against her. So it wasn't incomplete, it was an
15 additional piece that was not actually there.

16 Q So, if it's not at all true, hypothetically speaking,
17 that there is no powder in that letter, that she doesn't
18 truly understand what she's being accused of, is that right?

19 A I believe that she thinks that there might be more that
20 she's accused of than she actually is, but she does
21 understand everything that she is being accused of
22 accurately. She also added an additional accusation in
23 addition to the ones that are true that may not be part of an
24 actual charge.

25 Q So, that would be an inaccurate assessment of the

1 charge, yes or no?

2 A No.

3 Q So, if there was no powder in the letter and she's
4 telling you that she's being accused of sending powder in a
5 letter to Senator Schumer, would that be inaccurate?

6 A I think it's semantics. I think she understands the
7 charges. She's wrong about that additional piece and I
8 believe that that would not detract from her understanding of
9 what the actual charges are.

10 Q Okay. So, she's making up additional facts, that could
11 be what's happening, correct?

12 A She may be confused. She might have wrong information.
13 I am not sure but she -- all the charges that are in fact
14 true she was able to discuss.

15 Q Okay. But adding additional facts could be part of a
16 delusion, correct? That she's ISIS, that she's going to blow
17 people up, that could be part of a delusion, correct?

18 A She did not tell me that she's ISIS.

19 Q I'm talking about the letter. When she's writing in a
20 letter, hypothetically if she wrote this letter, and she is
21 saying that she is ISIS, ISIS Rules, and that she's going to
22 cut someone up in a million pieces and your whole family is
23 going to die, could that be a delusion, yes or no?

24 A Again, it could be one of several things, including
25 meaning to terrorize, threaten and scare.

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1 Q I understand what you said. I'm asking if one of those
2 several things -- could it be one of those possibilities that
3 she's delusional?

4 A That is one of the possibilities.

5 THE COURT: I think we covered that.

6 Q Exhibit 14, please. On July 15, 2019, she sent a letter
7 from jail to Congressman Brindisi. You reviewed that letter?

8 A I did.

9 Q Where she's threatening to blow him up and she signs it
10 ISIS?

11 A That is what I reviewed, yes.

12 Q And this is yet another example where it could be one of
13 several things but could be a delusion, yes?

14 A Yes.

15 Q Okay. And she talked to you about what she was feeling
16 at the time that she sent these letters, is that right? And
17 I'm going to show you Exhibit 10, which is the addendum on
18 page --

19 MR. EURENIUS: Objection, Your Honor. The
20 government -- I let the defense go.

21 THE COURT: Okay. The addendum is as to a
22 different issue, correct?

23 MS. BIANCO: The addendum is a different issue but
24 she talked about her psychiatric treatment at the time of the
25 offense, that she didn't feel her medications were effective

1 and that she was bugging out.

2 THE COURT: You can ask her about information she
3 had at the time she made the competency evaluation.

4 Q Did she tell you at the time she wrote those letters in
5 that time frame, the time frame she was receiving psychiatric
6 treatment, she did not feel her medications were effective,
7 the meds weren't helping me, I was bugging out, banging on
8 the windows, irritating the neighbors? She said that,
9 correct?

10 THE WITNESS: Your Honor, if I may address the
11 Court?

12 THE COURT: Did she say that to you at the time you
13 were evaluating her for competency?

14 THE WITNESS: No, that was not during the time I
15 was evaluating her for competency.

16 Q That was during the time of your evaluation as a whole,
17 correct?

18 A That was the time during my evaluation of her sanity.
19 That addendum that you're referring to is regarding to sanity
20 at the time of the offense. Those are two different
21 evaluations.

22 THE COURT: When did she make those statements to
23 you? Chronologically when did she make those statements to
24 you?

25 THE WITNESS: Specifically when I was evaluating

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1 her regarding the sanity issue, which certainly would bring
2 in incriminating information.

3 THE COURT: Month and year.

4 THE WITNESS: It was probably days between the two.
5 It was all around the same time. It wasn't a separate
6 evaluation, it was while she was at Devens.

7 Q She told you at the time she was writing these letters
8 her medication wasn't working and she was bugging out, yes?

9 A She did not --

10 Q It's in your report.

11 THE COURT: Let her answer.

12 A I understand. I just, I want to be helpful and I want
13 to answer, I just want to clarify that there were two
14 separate evaluations, and Ms. Nelson was given information
15 that the evaluation for her sanity is relevant to --

16 THE COURT: I'm not interested in anybody else's
17 assessment about --

18 THE WITNESS: No, this is what I said to her.

19 THE COURT: Pardon?

20 THE WITNESS: It is what I said to her, not what
21 Ms. Nelson said to me. So this was not in the course of my
22 evaluation of her.

23 THE COURT: Okay, fine. I get that, you evaluated
24 her for competency, you evaluated her for sanity. The
25 question is, at the time of those evaluations, which were

1 done within a short period of time, right?

2 THE WITNESS: Correct.

3 THE COURT: One within days of each other. Did
4 Ms. Nelson make the statements that Ms. Bianco has identified
5 to you? I understand you reflected them in a different
6 report. Did she make those statements to you?

7 THE WITNESS: She did make statements that that was
8 something that was going on when she was in the jail in
9 New York, yes.

10 THE COURT: Thank you.

11 Q So, when she's telling you she's bugging out and the
12 medications weren't working, at the time she's writing these
13 letters, could she be considered delusional?

14 A Um, not -- that could be one of multiple possibilities.
15 So, the medications that she takes typically manage her
16 behavioral issues, and so when she's not on medication, she
17 is much more provocative, she engages in self-harming
18 behaviors, she engages in a lot of oppositional behaviors
19 with staff, she can be -- and so when she's not on those
20 medications, all of those things can be true and maybe what
21 was going on at that time.

22 Q Well, when you were interviewing her about the letters,
23 didn't she tell you that the correctional officers were
24 telling her to write these letters and they were paying her
25 with books and magazines? Didn't she say that?

1 A She said that the correctional officers in the New York
2 State prison where she was were toying with her, that they
3 knew her history of writing letters and they were taunting
4 her about writing letters, telling her that it was okay to
5 write to Democrats rather than Republicans, and that they all
6 were familiar with her history and egging her on to write
7 letters.

8 Q And she told you they were paying her with books and
9 magazines, correct?

10 A Yes. They said that she got extra materials, I believe
11 it was books and magazines.

12 Q Could that be considered a delusion, that she believes
13 people are paying her to write threatening letters?

14 A Again, I was not privy to that, but certainly those
15 would be things that officers would have access to in the
16 facility, so books and magazines are a type of currency in
17 the prison system and that could be -- it could be something
18 that could have been done. I'm not privy to that.

19 Q So, you think there is a possibility that the
20 correctional officers were paying her in books and magazines
21 and this wasn't a delusion, so she could write threatening
22 letters to various people, is that what your honest opinion
23 is?

24 A Well, she made multiple statements about her rationale
25 or her motivation for and that was one of them.

1 Q Let's talk about a little bit about her delusions. They
2 go back for years and years. Showing you Mohawk Valley
3 psychiatric records, Exhibit 1, please. This is 8/18/92,
4 "Patient has become more angry and violent with development
5 of more bizarre behaviors, including running out into the
6 road and standing and swearing for hours at a time, making
7 faces at the windows of neighbors' houses." Do you see that?

8 A Yes.

9 Q So, you would agree that those -- she has a history of
10 delusions that go back many years?

11 A So, I'm not sure about the delusional aspect of this
12 particular statement you gave me, but that does seem to
13 certainly speak to, you know, mental health problems and it
14 could certainly be unusual bizarre behaviors, yes. I'm not
15 sure what the delusional piece of that is but is unusual
16 behavior and could be part of --

17 Q Are you ruling out delusions? That that is not a
18 delusion, is that what you're saying?

19 A I guess I'm not sure which part of that is delusional.

20 Q Running into the road, standing and swearing for hours
21 at a time, making faces at the windows of neighbors' houses,
22 that wouldn't be any kind of delusional behavior or
23 consistent with delusional behavior?

24 A Delusion is a belief that's false. I'm not sure what
25 false belief that that speaks to. Again, there might have

1 been a false belief associated with that, but that seems that
2 it's problematic behavior that could be associated with a
3 number of things. I guess I'm just not sure what you mean by
4 delusional.

5 Q I'll get to more specific examples. She claimed to have
6 two husbands who were doctors she met in the hospital.
7 That's a delusion, correct?

8 A So, that is a statement that she made to me.

9 Q A delusion?

10 A No. Because when I pushed her on that further, she
11 said, well, in fact they were not husbands, they were
12 actually people that she liked and that were nice to her, and
13 that ultimately told me that she didn't really know them very
14 well.

15 Q But she told you initially that she has two husbands who
16 are doctors who she met at the hospital, right? She said
17 that?

18 A She did say that.

19 Q Okay. She claimed to have seen faces in the walls and
20 heard her name called while at Strong Hospital, correct?

21 A She did say that to me, yes.

22 Q And that would be considered a delusion?

23 A No. That would be a visual hallucination or an auditory
24 hallucination.

25 Q That's not a delusion?

1 A It is not.

2 Q And a visual or auditory hallucination, would you
3 consider that a mental illness, mental defect?

4 A That could be a symptom of mental illness, yes.

5 Q Well, in August of 2021, didn't she cut her neck with a
6 razor because she believed the staff were playing games with
7 her when she was placed in quarantine for COVID-19?

8 A She did. Yes, she did.

9 Q That would be delusional behavior, correct, cutting her
10 own throat?

11 A No, it was not delusional. That was not based on
12 delusional. That was consistent with a lot of behaviors that
13 she had in terms of self-harming behaviors when she's unhappy
14 about situational issues, at that point it was quarantine and
15 isolation, which she did not feel was fair.

16 Q She said that she thought they were playing games with
17 her by placing her on quarantine for COVID, yes?

18 A Yes. She did not think she should have been on
19 quarantine for COVID.

20 Q And then she tried to slit her own throat?

21 A Correct.

22 Q She also claimed to be picked on by cellmates and others
23 in her unit, and none of this was actually observed by staff,
24 correct?

25 A Yes. I believe she did say that, yes.

1 Q Okay. So, if she believes she's being picked on by all
2 these different people and nobody's observing it, that would
3 be a potential delusion, correct?

4 A No, not necessarily. She has a history of poor
5 interpersonal interactions with peers that goes back a long
6 time. This is not part of a delusional system. She often
7 feels that people are against her or in some way mistreating
8 her or not treating her as fairly as other people.

9 Q So, she feels like she's being persecuted?

10 A She feels like that's being picked on, yes.

11 Q And if it's not true and she has this honest belief that
12 all of these people are picking on her, that could be a
13 delusion, yes or no?

14 A That's not typically a delusional behavior. That's more
15 consistent with personality disorder.

16 Q But it could be a delusion, yes?

17 A Not in that particular example that you gave, no, I
18 would not conceptualize that as delusional.

19 Q She claimed to have chased a teacher around with a
20 machete in elementary school. Do you remember her saying
21 that?

22 A Yes.

23 Q And did you determine whether or not that actually
24 happened by the school records?

25 A I don't have school records at that point, I don't know

1 whether that happened or not.

2 Q So, if she believes she was chasing someone, a teacher,
3 around with a machete in elementary school and that didn't
4 happen, could that be a delusion?

5 A It could be a provocative statement, it could be a lie.
6 Ms. Nelson makes many statements that are not truthful.

7 Q Could it be a delusion, yes or no?

8 A I don't think that that's consistent with delusion.

9 Q So, without a doubt, 100 percent certainty it is not a
10 delusion, is that what you're saying?

11 A So, a delusion is a belief that has some kind of core,
12 some type of -- it's not sort of a mixture of a variety of
13 untruths or lies. A delusion is a system and that's what we
14 conceptualize as a delusion, has a specific goal or slant.
15 And multiple untruths about one's background, one's history,
16 childhood, other parts of history, would not be
17 conceptualized as a delusion. Certainly there may be other
18 reasons why someone might not provide accurate information,
19 or straight up lie, or perhaps have other motivation why they
20 might say that.

21 A delusion generally has a specific core to it, a belief
22 that everything stems from. So again, if someone believes
23 that they are famous when in fact they are not, they might
24 act in certain ways, believe that they should have certain
25 privileges, that they believe that they should be respected

1 and they're not. But if that same person says something
2 that's not true about their childhood, that has nothing to do
3 with that particular issue, we would not sort of
4 conceptualize that as delusional, we would say that's a lie,
5 but this other piece is the delusional.

6 Q Let me just see if I understand this. For example, if
7 someone was claiming they're Osama bin Laden, that would be a
8 delusion?

9 A If they are not in fact Osama bin Laden. Again, if
10 they're writing a letter to try to terrorize someone, make
11 them believe that Osama bin Laden is after them, I would say
12 not. If they in fact believe that they are Osama bin Laden
13 and that is their actual belief, then I would say that's
14 delusional, not consistent with reality. So a lie is not the
15 same thing as a delusion. A provocative statement is not the
16 same thing as a delusion.

17 Q Okay. It's not the same thing, but if someone said and
18 they honestly believed that they are Osama bin Laden and
19 they're not, that's delusional?

20 A Yes, I would say that's delusional, yes.

21 Q If someone believes they're part of ISIS and part of a
22 Muslim brotherhood, that would be delusional if they're not
23 in ISIS or part of the Muslim brotherhood, correct?

24 A Yes. If that's part of their belief system, yes.

25 Q You said that Dennis, you believe that he was an

1 accurate reporter earlier on, correct?

2 A I said that there is some inconsistencies but that
3 his -- that I would not describe him necessarily as, I'm not
4 sure, you used a word that I think that it was inaccurate,
5 that was fully inaccurate. That there was some
6 inconsistencies so I think he is an inconsistent reporter to
7 me.

8 Q And someone who is working with a defense lawyer who is
9 trying to mount a defense, they need to get facts from the
10 client, correct?

11 A About the charges and the issues related with the
12 charges, certainly, yes.

13 Q And the facts should be -- they should have the
14 capability of being truthful, correct, truthful facts telling
15 their lawyer?

16 A One would hope that one would tell their lawyer truthful
17 facts, yes.

18 THE COURT: The question is they should have the
19 capability of telling truthful facts.

20 A Sure, yes. They should have the capability, yes.

21 Q Okay. And you said that she had some inconsistencies
22 with her reporting in the past. But let me direct your
23 attention to the statement you made in your report on page 3,
24 "She claimed that her mother drove a car loaded with she and
25 her siblings into the river," do you see that?

1 A I do, yes.

2 Q So do you know if that actually happened to Dennis?

3 A I do not know that.

4 Q So you don't know if that's fantasy or reality, correct?

5 A I don't know if it's a lie, if it's reality, or if it's
6 fantasy, I don't actually have that information.

7 Q And if she honestly believes that her mother drove her
8 and her siblings in a car into the river and she believes
9 that to be true, would that be a delusion?

10 A Again, if it's not part of a delusional system that's
11 related to delusional disorder, I'm not -- it's not
12 necessarily a delusion. It could be a lie. It could be an
13 inaccurate memory. It can be for someone who has an entire
14 delusion around their childhood about events that never took
15 place and that informs their understanding of their world, it
16 could be part of the delusional system, but this particular
17 issue I cannot say because I don't know if it actually
18 happened and that's not -- that's not part of her functioning
19 at this point, so I don't know that that's a part of a
20 delusional system.

21 Q What if a person thinks they can contact other people
22 through their dreams, would that be delusional?

23 A Again, a delusion is part of a delusional system, so I
24 would have to know more about the individual. People have
25 beliefs esoteric and, you know, in the abstract I really

1 can't say without knowing more about the individual that this
2 is someone with a delusional disorder and that it part of it.
3 Perhaps it can be, but in isolation I really cannot give a
4 diagnosis just based on that one piece of information.

5 Q Exhibit 5, BOP records 2/24/21, Dennis tells the mental
6 health provider, "I talk to myself and answer the questions
7 thinking about David Morse. He is a medical doctor that
8 understands me from AZ. He is in the trauma center. I
9 contact him through my dreams." Do you see that?

10 A Uh-huh, yes.

11 Q Could that be delusional?

12 A Well, in that particular case he was actually talking
13 about knowing that this information is coming from his own
14 head separate from the dreams part, so I don't believe that
15 he is talking about any kind of auditory hallucinations. He
16 is saying these are his own thoughts in terms of contacting
17 him through his dreams. Again, I don't think this is part of
18 a delusional system. People believe various things. I do
19 not see this as part of a comprehensive delusional system for
20 Ms. Nelson.

21 Q Do you consider it a mental illness when someone thinks
22 that they can contact people through their dreams and have
23 conversations? Is that a problem?

24 A Again I don't know if it's a problem. I believe that
25 Ms. Nelson has beliefs that are unusual and that are not

1 necessarily reality based. They change from day-to-day.
2 Sometimes she thinks these things, other times she thinks
3 that that is not the case. She also makes statements that
4 she retracts, that is not consistent with a delusional
5 disorder where it tends to be consistent, the belief doesn't
6 really change over time unless it's -- unless there is
7 treatment given. Delusional disorders don't usually respond
8 to treatment very well at all. In fact, medications don't
9 usually help with delusional disorders, it's one of those
10 very difficult to treat, they have a lot of staying power and
11 remain consistent. And so various statements that are, you
12 know, unusual are not typically what delusional disorders
13 look like.

14 Q You just said that her reality may change from
15 day-to-day?

16 A I said her statements change from day-to-day.

17 Q And her statements deal with her reality. Like, for
18 example, she's contacting people through her dreams, that
19 would be an irrational thought, is that right?

20 A Or it could be a provocative statement which Ms. Nelson
21 often makes. Again, that's not how delusional disorder
22 manifests. It is not sort of a hodgepodge of various odd
23 beliefs that come and go over time, that's not consistent
24 with delusional disorder.

25 Q But her odd beliefs that come and go from various times,

1 that could interfere with an attorney-client relationship in
2 trying to put on a defense, can't it?

3 A If it's related to the defense, to the content of the
4 charges, certainly. So people with delusional disorders can
5 certainly be competent and can participate in the legal
6 process, and that happened lots of times, including my own
7 experience. However, if that delusional disorder, the issues
8 relate that the delusion is about are specifically related to
9 the charges or perhaps to the attorney themselves, they might
10 have some false beliefs about the attorney or have a belief
11 that the issue is something other than the charge that they
12 want to bring forth to highlight these delusions, that
13 certainly can interfere with competency and one's ability to
14 participate in the legal process, yes.

15 Q Thank you. Now, Dennis has described having auditory
16 and visual hallucinations in the past, is that right?

17 A Yes.

18 Q And the records reflect as early as August of 1995
19 Dennis reported hearing voices for at least three years. Are
20 you familiar with that record from Mohawk Valley Psychiatric
21 Center, Exhibit 6?

22 A Again, there were five or six inches of records. I did
23 review most or all of the mental health records. I'm sure
24 that that was one that I reviewed, that seems consistent with
25 what I reviewed.

1 Q So for many, many years she has claimed to have auditory
2 and visual hallucinations, correct?

3 A Yes.

4 Q Yes?

5 A Yes.

6 Q Okay. And as late as January 1st, 2021, Exhibit 7,
7 please, she reports hearing and seeing things that others do
8 not?

9 A Yes.

10 Q And that could interfere with her ability to relate with
11 her lawyer in terms of putting on a defense if she's hearing
12 and seeing things that aren't there, yes?

13 A So, a history of seeing and hearing things would not
14 necessarily interfere. If those things are happening in the
15 moment and they are -- they may certainly interfere with the
16 communication if the person isn't able to be oriented to
17 their present experience. But a history of having those
18 things if they're not currently going on would not
19 necessarily interfere.

20 Q But if she has a history of them for going on twenty
21 years, if she's suffering from some kind of an auditory or
22 visual hallucination at the time she's speaking with her
23 lawyer, you would agree that that would interfere with the
24 ability to put on a defense, yes?

25 A So, the history would be the symptoms, if they were

1 active symptoms present at the time that the individual is
2 interacting with their lawyer and those things are -- those
3 things are prominent and interfering with the conversation,
4 then certainly that would be something that could interfere,
5 yes.

6 Q Okay. And you know that Dennis has a history of hurting
7 herself, correct?

8 A Yes.

9 Q She's cut herself, yes?

10 A Yes.

11 Q Bit herself?

12 A Yes.

13 Q Burned herself?

14 A Yes.

15 Q Rubbed feces on open cuts?

16 A Yes.

17 Q Swallowed foreign objects?

18 A Yes.

19 Q Hurt herself to the point where she needed surgery?

20 A Yes.

21 Q And she was committed multiple times to Central New York
22 Psychiatric Center in the past, correct?

23 A Yes.

24 Q And that's for things like swallowing a spork?

25 A Yeah. I believe that she's done that several times,

1 yes.

2 Q And then she rips out her surgical staples and swallows
3 them?

4 A Yes.

5 Q And she's continued those self-abusive behaviors
6 throughout her years?

7 A She has a long history of that, yes.

8 Q She doesn't seem to want to help herself?

9 A I'm not sure that I agree with that, that statement.

10 Q Let me be clear then. 5/8/21, Exhibit 9, she signs a
11 medical treatment refusal which states, "The consequences of
12 refusing this recommended treatment could include worsening
13 of medical condition and possibly death." Do you see that?

14 A Um, so that is not -- yes, I do see that, but that's not
15 related to what you were just talking about in terms of when
16 she has injuries that she's refused. I believe that there is
17 another underlying medical condition which she has, which are
18 acceptance of treatment has at times been inconsistent for.
19 That's not a self-harming issue so I'm just not associating
20 those two things.

21 Q Would you agree she has evidence of an irrational
22 thought process?

23 A In terms of this?

24 Q In terms of her history and the things she says and
25 does, she shows evidence of an irrational thought process?

1 A There has been consistent with borderline personality
2 disorder, she has engaged in thinking and behaviors that are
3 irrational, absolutely, yes.

4 Q Would you agree that her behavior may be the result of
5 faulty understanding?

6 A I guess which behavior are you talking about?

7 Q I'm talking about her writing letters, swallowing
8 sporks, having auditory and visual hallucinations. Her
9 behavior as a whole could result from having a faulty
10 understanding of what's actually going on around her?

11 A So, those are very different issues that you bring up.
12 So, in terms of swallowing sporks, cutting herself, doing
13 those things, those are long-standing problems that she's had
14 and those are usually associated with some dissatisfaction in
15 her circumstance, or in a relationship, or wanting a change
16 in conditions, and she's consistently voiced that after the
17 fact. Those type of behaviors are very consistent with
18 borderline personality disorder. And so I would qualify
19 that, the motivations for those as different, because you
20 kind of put a few things together, than writing letters.

21 Q Let me break up my question, all right. You said that
22 she may have relationship issues or problems so she'll hurt
23 herself, correct?

24 A Well, I would say more than a relationship issue. And,
25 yes, it's -- yes. The fundamental thing is having a poor

1 ability to advocate for herself and being able to ask for her
2 needs being met, which is kind of part and parcel of a
3 personality disorder, specifically borderline personality
4 disorder. So these individuals engage in sometimes very
5 dramatic and maladaptive, so self-harming behaviors, in order
6 to either express their distress or get their needs met.

7 Q So it's a faulty, her faulty understanding of the
8 situation that causes her to self destruct, yes?

9 A It's not a faulty understanding of the situation. It's
10 a maladaptive, it's poor capacity to be able to basically
11 function interpersonally and socially, so be able to
12 negotiate with other people, to be able to engage with other
13 people and keep their assessment of whether that person's
14 helpful or unhelpful steady over time.

15 Q Well, you're aware that she's literally wrote dozens and
16 dozens of threatening letters in the past that she's been
17 charged for, correct?

18 A Yes.

19 Q And let's talk about some of those letters. Exhibit 15,
20 Count Three, please, date 12/15/01 to 12/17/01, writing to
21 the Federal District Court in the Western District of
22 New York. It's a bomb threat letter to Judge Feldman, "Ten
23 days until you die and die." And then she has this figure
24 360, 360,000.00 million dollars. She wants apparently the
25 money sent to the jail. She's threatening to burn the

1 judge's house down, find the parents and kill them. Okay.

2 You see that, correct?

3 A Yes. I see this exhibit in front of me, yes.

4 Q And when somebody makes up these numbers, these huge
5 amounts of numbers and thinks people are going to send them
6 money in the jail, that could be considered a delusion, yes?

7 A Again, the motivation for this particular letter I do
8 not know; it can be to terrorize, it can be to be
9 provocative, it can be out of anger with the individual they
10 might have anger about from previous interactions with this
11 person. I don't know Ms. Nelson's thought process, whether
12 she believed that that would in fact happen, whether she
13 thought that was realistic. It's really impossible for me to
14 be able to speak to her thought process related to that
15 particular letter.

16 Q Are you ruling out that this could be delusional
17 behavior? Are you ruling that out, yes or no?

18 A I did not assess her for her sanity at the time of these
19 letters, so I cannot say. On the face of it, I think there
20 is lots of other explanations, but I also was not party to
21 assess her in 2001, so I don't know what her mental status at
22 that time was. I don't believe that there was a sanity
23 evaluation. I'm not sure if this is the one where she was
24 found competent, but I'm not sure whether there was a sanity
25 evaluation.

1 Q You already testified here that you don't think she
2 suffers from delusional disorder, correct?

3 A At this moment, correct, that's not a diagnosis that I
4 would give to her at this point, I do not see symptoms of a
5 delusional disorder. It's certainly possible that at some
6 previous time there might have been some thought processes
7 associated with a delusional disorder. She has had a variety
8 of diagnoses over time. My best conceptualization is that is
9 all part of personality disorder, but I also cannot rule out
10 behaviors that were previous to my time with her or recently
11 right before my time with her.

12 Q And maybe I'm not hearing you correctly. Yes or no, are
13 you ruling out the possibility that she has suffered from
14 delusional disorder for a number of years? Are you ruling
15 that out?

16 A Ever in her life, I cannot rule that out. I cannot rule
17 out things that might have happened in the past, no. I'm not
18 in the position to do that.

19 Q Well, we talked a little bit about if she believed that
20 she was Osama bin Laden or ISIS, that would clearly be
21 something that could be a delusional disorder, correct?

22 A If that's something that she believes -- if that is
23 something that is a belief she has right now, and I certainly
24 don't have any reason to believe that is true, then I would
25 say that that could be one of the explanations for why she's

1 making this statement.

2 Q When you reviewed the prior threat letters, there are a
3 number of letters where she signs them Osama bin Laden,
4 correct?

5 A Talking about the ones related to this case or a
6 previous case?

7 Q No, the past cases.

8 A I believe so. I believe there were some. I did not
9 review those as carefully as the ones in this particular case
10 but I believe there were some that were, at least one I can
11 think of that were signed that.

12 MS. BIANCO: May I have a moment, Your Honor?

13 (Pause in proceedings.)

14 Q Her fascination -- well, would you agree that she was
15 very fixated on ISIS and Osama bin Laden? Would you agree
16 with that?

17 A She did not bring up ISIS or Osama bin Laden at any
18 point in the course of her evaluation other than when I was
19 discussing those letters related to the sanity evaluation.
20 That was not part of her thought process or her engagement
21 with myself, you know, or her provider because she was
22 designated as an inmate at Devens so she had a mental health
23 provider as well.

24 Q If a person would for years write letters and claim to
25 be Osama bin Laden, would that be somebody that you might

1 consider to have a delusional disorder?

2 A If the only time that that issue came up with that
3 statement or self identification as such would come up during
4 those letters, then I would say that that in fact is evidence
5 that that would not be part of a delusional disorder, but
6 rather something having to do with the letters themselves.
7 And someone who has a delusional disorder, that is something
8 that they share, that is a core belief about themselves when
9 they're writing letters, when they're eating, when they're
10 talking, it's something that is part of them, so that would
11 certainly come up at some other time. That did not.

12 Q It did not come up during your evaluation, but you do
13 not know how often it came up with her through her history of
14 incarceration, correct? Is that fair?

15 A Prior to BOP, yes. I do have records starting from when
16 she was transferred to BOP and I was able to engage with her
17 providers and staff at Devens. Prior to that, other than
18 letters, I'm not aware that that was something that was at
19 Devens. But I don't know as much as I do about Devens,
20 certainly.

21 Q If a person believed that they could turn on a bomb from
22 their jail cell, would you consider that a delusion?

23 A If that is an actual belief that they have, I would say
24 that's not consistent with reality. So again, it could be
25 part of a delusion, it could be part of an intention to

1 frighten someone, that someone can cause harm. There could
2 be a lot of explanations, but if in fact that is a belief
3 that the individual has, I would say that that's not
4 consistent with reality.

5 Q Okay. So showing you Exhibit 16, Count Six, 11/16/01,
6 do you see on the very bottom where it says, "This is no
7 joke. If you try to do anything the bomb will go off. I
8 will turn it on from my cell. Signed Dennis T Nelson."
9 Correct?

10 A I believe this is related to that same charge 2001,
11 those letters.

12 Q That's right?

13 A Yes, I do see that.

14 Q So, if she's saying she can turn on a bomb from her cell
15 and actually believes that, could that be a delusion?

16 A If that is something that she believes, she or anyone
17 believes, that I would say is not consistent with reality
18 that I'm aware of.

19 Q Would you think it's consistent with reality for a
20 person to send threatening letters from a jail with their
21 name on it asking people to send millions of dollars to the
22 jail? Is that consistent with reality?

23 A Well, I believe that was reality. That was what she was
24 charged with doing.

25 Q I'm asking you if her belief that she's going to get

1 millions of dollars sent to her in the jail by writing
2 threatening letters, is that consistent with reality? People
3 are going to send her millions of dollars in the jail from
4 writing threatening letters?

5 A Again, are you asking me sort of as an individual do I
6 think it's more likely than not to happen? I think that's
7 probably not likely to happen. That might just be a fantasy,
8 that might be hopeful thinking. And I don't think as an
9 individual that that is a realistic outcome of letter
10 writing.

11 Q When you say not a realistic outcome, not rational
12 thought that if you write letters threatening government
13 officials and asking them send me millions of dollars, it's
14 not going to happen, would that be fair? That's not rational
15 thinking?

16 A Again, the motivation for these letters I do not know.
17 I do not think that that's a realistic outcome from these
18 letters. I do not know Ms. Nelson believed that that in fact
19 would be the outcome of these letters or whether the other
20 part of the letters which are more threatening and menacing
21 was the intention or whether there was some other motivation.
22 I'm not able to discern that from this point in time but I do
23 not think that that, from my perspective that that would have
24 been a reasonable outcome from those letters.

25 THE COURT: I think I understand.

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1 MS. BIANCO: Okay.

2 Q Let's go back to the IQ scores done in 1992. That was
3 over thirty years ago, is that right?

4 A 1992, yes.

5 Q And a full scale IQ, that's Defendant's Exhibit 11, full
6 scale IQ is 76, verbal is 72. We went over that, correct?

7 A Yes.

8 Q And there is a standard error of measure for this test,
9 is that right?

10 A Yes.

11 Q It could be off plus or minus three points?

12 A Generally three to five points, yes.

13 Q Three to five, correct?

14 A Yes.

15 Q So her full scale IQ could be as low as 71 and her
16 verbal IQ could be as low as 67, correct?

17 A Yes.

18 Q And that would be in the mentally retarded range, is
19 that right?

20 A 71 would not be, no, that's borderline.

21 Q But 69 would be, correct?

22 A Again, because one or two point difference in reality
23 does not make a difference for the individual, so at that
24 point we would really look at adaptive functioning and that's
25 how you would determine whether or not this individual really

1 belongs in the borderline or the intellectual disability.

2 Mental retardation is not a phrase that's used any more, it's
3 intellectual disability.

4 Q Let's look at the adaptive functioning which you just
5 talked about. And that would be in her social realm,
6 correct, looking at how she lives her life, right?

7 A She wouldn't fall into that category in any case, it
8 would be 71. 71 would not fall into intellectual disability.

9 Q Well, on the verbal IQ?

10 A It's not part of it, it's the full scale that you would
11 look at.

12 Q Let's talk about her adaptive functioning, because you
13 brought that up?

14 A Sure.

15 Q And adaptive functioning has to do with the way she
16 deals with life and how she handles herself, correct?

17 A It's a very concrete thing, so ability to care for one's
18 needs such as food, shelter, be able to speak in a way that
19 other people can understand.

20 Q Whether they can have a bank account, right?

21 A Someone in the borderline range may or may not be able
22 to fully manage their money. They might be able to be
23 taught, but certainly there might be some limitations into
24 how sophisticated their ability to manage money could be.

25 Q Let's talk about Dennis' adaptive functioning. She's

1 been in prison almost her entire life, correct?

2 A Yes.

3 Q She hasn't been able to care for herself, correct?

4 A So, you would look at her adaptive functioning within
5 the setting where she is. So, meaning does she need help in
6 the prison setting, which is where she lives, to be able to
7 follow the routines, be able to engage with individuals if
8 she chose to do so, to be able to interact. It's a very sort
9 of concrete bar, it's not -- so, it's not necessarily being
10 able to do things at a high level but it's being able to
11 basically care for one's self in one's own environment.

12 Q And she's been in a mental health unit almost the entire
13 time she's been in prison, correct?

14 A She's been in institutions, some type of institution,
15 correct.

16 Q And you wouldn't classify her adaptive functioning as
17 high, would you?

18 A I would -- well, I would classify her adaptive
19 functioning as adequate in the setting that she's in. There
20 is no indication that she needed specific help more so than
21 anybody else in the environment around adaptive functioning.

22 Q Well, she's swallowing various objects that are harmful
23 to her, correct?

24 A So, that would not be mixed into adaptive functioning;
25 that really has to do with her mental health diagnosis.

1 Certainly wouldn't argue that she has acted adaptively in
2 terms of her mental health. In fact, her diagnosis is
3 specifically maladapt, the core of it is maladaptive
4 behaviors. That's mixing of two things that are not meant to
5 be mixed. We're talking about just in her intellectual
6 capacities.

7 So, if she were to have an IQ score of less than 70,
8 which she doesn't, but if she were to and we needed to make a
9 determination whether she most belongs in the borderline kind
10 of functioning type of person or if she most functions like
11 someone who's intellectually disabled, we would look at her
12 adaptive functioning. That doesn't have to do with any
13 mental health symptoms that would go on because mixing those
14 two together could really confound intellectual functioning.
15 You would only look at can she care for herself? Can she
16 take care of her body? Can she take care of her physical
17 needs? Can she interact with other people? You know, from a
18 cognitive perspective, does she know how to ask for things?
19 Does she know how to follow rules, follow directions, things
20 of that nature?

21 So, I would say that her adaptive functioning is not
22 showing that she's functioning at a lower level than her IQ
23 score. I think that she's functioning very consistently with
24 someone in the borderline range.

25 Q Okay. And you said it had to do with adaptive

1 functioning, her ability to get along with people,
2 interpersonal relationships, is that what you said?

3 A No, I didn't say that. Her ability to interact, so
4 again ask for things, talk to other people, ask questions, be
5 able to understand them answering questions, knowing if she
6 has a question. Again, it's pretty concrete. And again,
7 that would only come into play if her IQ score was lower than
8 it actually is.

9 Q Okay. Now the IQ test, that was the WAIS-R test at the
10 time, correct, in 1992?

11 A Yes.

12 Q And the IQ test measures many different cognitive
13 functioning in certain subtests, correct?

14 A Correct.

15 Q There are verbal comprehension subtests?

16 A Yes.

17 Q And many of these measure memory, abstract reasoning,
18 the ability to evaluate and use past experiences? Those are
19 some of the subtests on the WAIS-R, correct?

20 A Correct.

21 Q Some measure the ability to comprehend, correct?

22 A Correct.

23 Q For example, the digit scan subtest is a measure of
24 short term memory and the ability to pay attention, right?

25 A Correct.

1 Q And the similarity subtest deals with a level of
2 abstraction, whether something is the same or different?

3 A Yes.

4 Q And there are certain scores for each subtest of the
5 WAIS IQ test, correct?

6 A Yes.

7 Q We don't have any of the subtest scores from the 1992
8 test?

9 A Well, this is a -- we have the --

10 Q The subtest, do we have any scores of the subtest?

11 A On this report I do not see it, no.

12 Q And a more revised IQ test came out since the
13 publication of the WAIS-R, correct?

14 A There has been two actually since then.

15 Q And the more recent one would be the WAIS-IV, is that
16 right?

17 A Yes.

18 Q On March 22, 2022, I asked you whether you can conduct
19 an IQ test on Ms. Nelson so I can assess how intellectually
20 impaired she may be. I was very concerned about Ms. Nelson's
21 understanding and cognition when I speak with her. Her
22 stated goals are entirely inconsistent with her actions. Do
23 you remember me sending you that email?

24 A I believe so.

25 Q And you refused to perform a new IQ test, yes or no?

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1 A Well, I indicated that she had testing done.

2 Q Thirty years ago, right?

3 A Those scores would not change.

4 Q Okay. Let's talk about her ability to assist her lawyer
5 in her own defense.

6 THE COURT: Why don't we take a break. I'm
7 assuming you've got a ways to go.

8 MS. BIANCO: I do.

9 THE COURT: We're going to take a five minute
10 recess, resume at 3:00.

11 (2:57 p.m., recess.)

12 (3:04 p.m., reconvene.)

13 Q Now, it's your testimony that Dennis has sufficient
14 present ability to consult with his lawyer -- with her lawyer
15 in implementing a defense with a reasonable degree of
16 rational understanding, is that correct?

17 A Yes.

18 Q Let's talk about that. Now, your evaluation was
19 conducted from September 9, 2021 through November 30, 2021,
20 is that right?

21 A Correct.

22 Q And Dennis was willing to meet with you for your
23 interviews, yes?

24 A Yes, with one exception. She cut one short but did
25 indicate that she was willing to meet again and she did.

1 Q But your interviews were conducted in a controlled
2 environment, correct?

3 A It was in a prison.

4 Q And you could speak with her any time you wanted to at
5 the prison?

6 A Yes.

7 Q She didn't have the ability to hang up the phone on you?

8 A It was not done by phone, no.

9 Q And you said even with this she had one incident where
10 she cut the interview off and walked away?

11 A Well, she said that she didn't want to continue at that
12 time. She did engage with me and she was -- we were in the
13 middle of an interview, just had started, she said that she
14 didn't want to continue, and I said that would be okay and
15 she got up and left.

16 Q And fair to say you never had to deal with Ms. Nelson
17 by talking on the phone?

18 A No.

19 Q So hypothetically if you arranged for a telephone call
20 with Dennis and she refused to come to the phone to speak
21 with you, would it be your opinion that she had the
22 sufficient present ability to consult with her lawyer if she
23 refuses to speak with you?

24 A Well, so refusing to speak with me would not have
25 anything to do with capacity, it would be with her will at

1 that time, so that would not speak to her capacity. I would
2 not know whether she has the capacity or not but I would know
3 that she did not have the will at that moment to speak to me.

4 Q Well, you would agree that a person in order to work on
5 their defense, they have to understand the nature of the
6 proceedings, right?

7 A Correct.

8 Q And the nature of the proceedings would be the
9 defendant, the person accused, talking with their lawyer,
10 yes?

11 A That would be part of the preparation for the
12 proceedings, correct.

13 Q So hypothetically if ever time Ms. Nelson got on the
14 phone and hung up without provocation after one or two
15 minutes, would it be your opinion that she understood what
16 the role of her lawyer is supposed to be when she's refusing
17 to speak with her?

18 A Again, I don't know that that would give me any
19 information about her understanding the role of her lawyer.
20 It would show me that she may have a disagreement, or a
21 distress tolerance, not willingness, lack of interest. There
22 is a lot of things that would not give me any information in
23 terms of her capacity, it would not be helpful in terms of
24 the actual conversation as it wouldn't take place.

25 Q Well, it would impede her ability to help presenting a

1 defense if she refuses to speak with her lawyer, correct?

2 A It would impede her mounting a defense; it would not
3 speak to capacity.

4 Q So, mounting a defense, if she doesn't want to speak
5 with her lawyer, she hangs up on her lawyer, that would
6 impede her ability to mount a defense, yes?

7 A Not engaging with her lawyer may certainly impede her to
8 ability to mount a defense with her lawyer, yes.

9 Q In reviewing the materials in this case, you found that
10 Dennis had a pattern of interpersonal difficulties, is that
11 right?

12 A Yes.

13 Q She had problems getting along with staff, correct?

14 A At times, yes.

15 Q She had problems getting along with other inmates or her
16 peers, yes?

17 A Yes. At times, yes.

18 Q And this occurred at numerous facilities, yes?

19 A Yes.

20 Q And it occurred over the course of years?

21 A That's correct.

22 Q With respect to Dennis' interpersonal difficulties,
23 would you agree that her difficulties derived from a
24 combination of her psychiatric, psychological, cognitive
25 problems, i.e. her personality disorder, delusional disorder,

1 and poor understanding? Would you agree with that statement?

2 A I do not believe that her difficulties are resultant of
3 a delusional disorder. I do believe that they are resultant
4 of her personality disorder and possibly some additional
5 contribution from intellectual limitations in that her
6 thinking is not very sophisticated, so that can also have
7 some -- undermine sort of her ability to kind of understand
8 the information that's being given to her.

9 Q Would you agree with this statement, agree that her
10 difficulty getting along with people is symptomatic of
11 underlying deficits, not because she got up in the morning
12 determined to make her life more miserable? Would you agree
13 with that statement?

14 A I would agree that she's not trying to make her life
15 more miserable.

16 Q Okay. But it could be symptomatic of her underlying
17 deficits, her inability to get along with people?

18 A Certainly.

19 Q Would you agree that the synergy between her mental
20 disorders has created lifelong problems for her in her
21 ability to navigate any environment?

22 A I would say that's a fair statement, yes.

23 Q Would you agree that Dennis' interpersonal difficulties
24 can affect her ability to consult with counsel?

25 A I don't believe that it would interfere with her

1 abilities to. I believe that it could interfere with her
2 willingness and tolerance of hearing things she may not like
3 and be able to continue conversations in that context, yes.
4 But I do believe she has the capacity to consult.

5 Q She has the capacity to consult, but possibly only for a
6 very, very short time, would that be fair?

7 A It would vary. She sat through multi hour interviews
8 with me and with other providers most of the time, although
9 there were sometimes, including the one I mentioned, where
10 she was frustrated over something, I'm not even clear what it
11 was, and cut that particular interview off. So I would say
12 it varies, her willingness to engage.

13 Q Her interpersonal abilities and problems have affected
14 her mental health treatment, would you agree with that?

15 A Yes.

16 Q And I want to direct your attention to a particular
17 encounter on 2/24/21, Defendant's Exhibit 5, at the Bureau of
18 Prisons with mental health professionals. She participated
19 briefly before terminating the conversation by putting a
20 blanket over her head and not answering any further
21 questions?

22 A Yes.

23 Q And that is something that she has a habit of doing,
24 walking away, stopping, refusing to communicate, would you
25 agree with that?

1 A I believe that there is multiple examples of something
2 like that, I would say that's a clear assessment, yes.

3 Q And in reviewing the materials in this case, you found
4 that Dennis had an extensive history of difficulty tolerating
5 and regulating anger and distress without resorting to
6 extreme reactivity?

7 A Yes. That's consistent with her diagnosis, yes.

8 Q And you state, "When attempting to manage extreme
9 emotions, she resorts to self harm such as cutting herself,
10 inserting objects in her body, and destroying property and
11 biting herself," yes?

12 A Yes.

13 Q You agree that a criminal charge and a trial can cause a
14 person a significant amount of distress?

15 A It can, it certainly can. It varies from individual to
16 individual and times in their lives, but I could see that's
17 stressful for most individuals.

18 Q Well, a person like Dennis who has a low tolerance for
19 distress, he would -- she would resort to extreme reactivity
20 if she has a low tolerance for distress, correct?

21 A Again, I think that's a generalization. I've engaged
22 with her around issues about the charges and she was able to
23 tolerate that. Although again, there might be times or
24 specific situations that come up that can be more triggering
25 and she can react in a more extreme way, but to date around

1 these particular charges that is not the way that she's
2 responded.

3 Q Okay. Do you agree that Dennis' low tolerance for
4 distress can affect her ability to consult with counsel?

5 A It can interfere at specific times in that she might
6 withdraw from conversation or terminate a specific meeting,
7 that can certainly happen.

8 Q And in the course of a trial, a person accused of a
9 crime may need to consult with their lawyer during the course
10 of the trial, correct?

11 A If they choose to do so, certainly, yes.

12 Q And if a person has a low tolerance for distress and
13 then just shuts down and, for example, puts their head on the
14 desk, would they be able to effectively communicate with
15 counsel during a trial?

16 A I don't believe that that has anything to do with
17 capacity. I think that that has to do with the decision that
18 the person may make at the time. Some people do have less
19 stamina because of maybe physical, maybe mental health
20 issues, and there might have to be some adjustments that
21 would be made. Again, I'm speaking in the abstract. But
22 that does not speak to capacity, that speaks to particular
23 choices individuals might make at a particular junction in
24 the proceedings.

25 Q Well, I'm asking you if a person like Dennis shut down

1 during the course of a trial, okay, would they have the
2 present ability to consult with her lawyer if she shuts down,
3 puts her head on the table and won't speak?

4 A Yes, because my opinion is that Ms. Nelson does not have
5 a mental disease or defect that undermines her capacity to
6 consult with her attorney as well as participate in the legal
7 process. That does not guarantee that she or anyone with the
8 same capacities would actually do that or make decisions
9 about what they should do in their case.

10 Q You talked to Dennis about her understanding of the
11 trial participants and process, correct?

12 A Yes.

13 Q Would you agree that Dennis gave you many wrong answers
14 which you had to correct?

15 A Um, yes, so part of --

16 Q That was a yes?

17 A Yes. Well, I'm going to go back. I'm not sure it was
18 many wrong answers, but there was some wrong answers and I
19 did have to make some corrections.

20 Q She initially stated that, I, Randi Bianco, was hired by
21 her mother to defend her, yes?

22 A I believe she said that.

23 Q And you corrected her by telling her that I was a
24 federal public defender, correct?

25 A Yes.

1 Q And only after you told her this did she acquiesce that
2 that actually happened, correct?

3 A Yes.

4 Q She was under this belief that her mother hired me,
5 correct?

6 A That's what she said, yes.

7 Q She initially told you that a jury is comprised of 18
8 persons, correct?

9 A Yes.

10 Q And you had to correct her that there were only twelve
11 people on a jury?

12 A Yes. I believe she was talking about six alternates,
13 but yes.

14 Q Well, she had more misconceptions about the judicial
15 process, didn't she?

16 A I believe there were some other things that I needed to
17 correct.

18 Q She didn't know that a jury's decision had to be
19 unanimous, yes? She didn't know that?

20 A Yes, correct.

21 Q You had to tell her what that concept meant?

22 A Yes.

23 Q And she didn't understand that until you told her?

24 A She did not know about it, yes.

25 Q Likewise, when you asked Dennis to discuss the role of

1 the evidence and witnesses, she said that evidence is used
2 to, quote, "make sure it is the right evidence, like letters
3 and my medical records, like I could show the jury if you had
4 a weapon," end quote. Do you remember her saying that?

5 A Yes.

6 Q That doesn't make any sense, does it?

7 A Well, it actually did make sense to me. She gave
8 examples of evidence, people often do that. It may not be a
9 very eloquent response but I did not think that that was --
10 that it didn't make sense. It was not, you know, again a
11 very eloquent response.

12 Q Not an eloquent response. Well, if she was explaining
13 that to another person, you wouldn't have to decipher the
14 meaning of it, correct?

15 A If she was explaining to another person?

16 Q What she said to you, you had to extrapolate what she
17 meant, it wasn't a clear answer, is that right?

18 A That's certainly part of my job, yes.

19 Q And you explained to Dennis that evidence could be
20 presented by both the prosecution and the defense, yes?

21 A Um --

22 Q Exhibit 10, page 9.

23 A Yes. I don't recall what she said about it but I do
24 believe that I clarified that for her, yes.

25 Q You had to explain that to her?

1 A Yes.

2 Q And only after you said that did she acknowledge those
3 facts to be true, right?

4 A Yes.

5 Q Did you ever wait a few minutes to go over these
6 concepts again to see if she actually remembered them?

7 A So --

8 Q That's a yes or no question.

9 A At times she used those concepts in answering other
10 questions, but I did not wait specifically a few minutes and
11 then ask again.

12 Q So you don't know if she actually recalled those
13 concepts or had the ability to comprehend them after she was
14 immediately told, true?

15 A I have no reason to doubt she was able to comprehend
16 them.

17 Q But you didn't test her to see if she comprehended them
18 a few minutes later, yes or no?

19 A I did not test her a few minutes later, that is correct.

20 Q Let's talk about Dennis' decision-making ability. You
21 said that Dennis lacked intellectual sophistication which at
22 times undermines effective decision-making, correct?

23 A Yes.

24 Q Dennis had difficulty articulating the protection
25 against incrimination, correct?

1 A Yes.

2 Q She only expressed understanding when you described the
3 concept to her, correct?

4 A I'm just going to review for a second because I
5 believe -- if you give me one minute to review.

6 Q Sure.

7 A I don't think that's what you pulled up.

8 Q Page 9. Sorry, apologies.

9 A Okay, yes.

10 Q So, you were explaining the process to her, correct?

11 A Yes, yes. Which is typical, yes.

12 Q And she's acquiescing or saying that she understood,
13 yes?

14 A Well, initially I asked her about it, which is just
15 typically what I would do and see how far the individual
16 might be able to answer, you know, organically on their own,
17 which was hard for her, she was not able to do that on her
18 own. She talked about her own case, which I tried, again
19 because of that firewall to try to get her away from and try
20 to speak more in the abstract, which she had a hard time
21 doing.

22 Q When you say she had a hard time speaking in the
23 abstract, she couldn't speak in the abstract, correct? She
24 couldn't do it?

25 A Well, that's very typical because individuals have only

1 their own cases and I try to remind them --

2 THE COURT: Again, the question is about her, not
3 whether it's typical.

4 A I'm sorry. No, she had a hard time doing it in the
5 abstract.

6 Q She couldn't do it, correct?

7 A Well, she was trying to, she was trying but she kept
8 swerving into her own case, so she would kind of mix the
9 abstract with her own case.

10 Q After you talked about the protection against
11 incrimination and she expressed her understanding, did you
12 wait a few minutes to talk about that concept again to see if
13 she actually understood it or remembered it?

14 A Again, I did not wait a few minutes, but also because we
15 had spent some time on it and she ultimately answered
16 consistently and coherently.

17 Q So the answer is no?

18 A Well, I didn't have any questions that she understood.

19 Q When you asked her how she would decide between
20 accepting a plea deal and proceeding to trial, Dennis became
21 frustrated when attempting to respond, yes?

22 A Yes.

23 Q She didn't know the answer, correct?

24 A Well, there is no answer, that's her -- that's her own
25 opinion of how she would proceed.

1 Q Well, she didn't have an opinion, she couldn't give you
2 anything, correct?

3 A I'm sorry, I'm just going to reread this because I want
4 to make sure I give an accurate response. Yes, that's
5 correct, she had a hard time, she became frustrated.

6 Q So, you had to provide her with concrete clues and
7 examples to explain that, correct?

8 A Yes.

9 Q And she couldn't again talk about this concept in the
10 abstract, correct?

11 A Yes. She talked about her own case.

12 Q And you talked to her about this concept for several
13 minutes before she was actually able to give you an answer,
14 yes?

15 A Yes.

16 Q And did you wait after you talked about this difficult
17 concept, wait a few minutes to see if she actually understood
18 or retained any of this information? Did you wait?

19 A What she ultimately said to me was from her, not from
20 me, so it wasn't information that I said to her that I was
21 then testing. She ultimately gave me correct information, so
22 I didn't have any reason to think she wouldn't at another
23 time give me correct information.

24 Q That was after several minutes of giving her concrete
25 cues, correct?

1 A To steer her to specifically what I wanted her to talk
2 about.

3 Q What you wanted her to talk about?

4 A What I was asking her about, yes.

5 Q Did you wait a few minutes and then see if she actually
6 remembered any of this and said tell me in your own words
7 what did we just talk about? Did you ask her any of that?

8 A Her response came from her, not from me. I did not ask
9 for her to reiterate it because she initially was the one who
10 provided me with the correct response in the first place.
11 So, no, I did not a second time ask her the same thing.

12 Q Well, did you ask her to describe what the concepts were
13 in different words other than the words that you gave her?

14 A Well, I asked in many different words, which is why we
15 spent some time on it, when an individual may not be
16 understanding my questions initially, because human
17 conversation is not rigid. Attorneys also can form things in
18 different ways. My job is to educate. The question isn't
19 whether someone knows something or doesn't know something,
20 unlike a test. The job of evaluating competency is whether
21 the individual is able to learn the concept and be able to
22 understand the concept even if this might be the first time
23 that they're presented with it.

24 Q And you don't actually know if that's the first time she
25 was presented with those concepts, correct?

1 A I don't believe it was the first time. She's been
2 through other criminal cases so she may have certainly had at
3 least some version of those. She didn't go to trial
4 necessarily so that may not have come up.

5 Q Well, you're aware that she did go to trial on at least
6 one occasion, correct?

7 A I believe there was at least one of the charges that she
8 went to trial.

9 Q And she was arrested multiple, multiple times, correct?

10 A Yes, she has multiple charges.

11 Q And you had to explain all of these concepts to her
12 because she didn't understand them. So you were educating
13 her, is that right?

14 A About some of them, yes.

15 Q And it appears that she wasn't retaining any of the
16 information from the years past from all of these other
17 charges, correct?

18 A I wouldn't say she didn't retain any information but
19 there was some examples you gave, how many members might be
20 on a jury, and recalling that both sides can bring
21 information, as well as kind of some of these nuances
22 about -- and this is the more sophisticated part of
23 understanding a trial, so --

24 Q Well, that's part of the competency? She has to
25 understand the trial?

1 A Yes. The decision-making part, yes.

2 Q And for someone who has been arrested multiple, multiple
3 times, she didn't appear to have the information that you
4 would think that she would know after being arrested so many
5 times to be sitting with you where you have to educate her,
6 yes?

7 A Again, this is trial information. Most of the time she
8 didn't go to trial, either she did not recall it or has
9 forgotten it, but certainly she did have previous experience
10 at least once with trial and with the legal system on
11 multiple occasions.

12 Q Okay. But she didn't understand some basic simple
13 concepts that you had to explain to her by giving her
14 concrete cues, yes?

15 A No, I didn't say she didn't understand them. She didn't
16 understand what I was getting at and what I wanted her to --
17 what the question was with what information I was trying to
18 get her to answer in terms of her accepting what would happen
19 if one went to trial versus accepting a plea and what might
20 be the benefits and pitfalls of doing those two things. I
21 would not conceptualize that she didn't understand them. I
22 think she had a hard time answering those things in the
23 abstract and I needed to conceptualize them in a few
24 different ways to get at her responses. Her response was
25 ultimately correct, so I do believe that she understand the

1 concept, but she's someone that has a hard time answering
2 things in the abstract or not personalizing them, and that
3 may certainly be driven by lack of sophistication.

4 THE COURT: Let's move on.

5 Q So, in the end when you were talking to her about her
6 ability to make decisions, you assumed she had the ability to
7 understand after your conversations with her, correct?

8 A I assessed her to have the ability to understand.

9 Q You had never reached out to me, the defense lawyer,
10 correct?

11 A Well, we had email exchange and I believe at the very
12 beginning of the evaluation that we did reach out, which is
13 why I received all that information from you.

14 Q Okay. You never reached out to me to ask what problems
15 I had with communicating with Dennis, did you?

16 A Again, you did send a letter in the beginning saying
17 that any information that you might want to offer, including
18 records or any other information, we would like to have
19 because we're doing the evaluation, so, yes, my secretary
20 Rebecca Peterson did reach out to you.

21 THE COURT: Did you ever speak to Ms. Bianco?

22 THE WITNESS: By email.

23 THE COURT: Did you ever speak by telephone?

24 THE WITNESS: I don't believe we had a phone call.

25 THE COURT: By email did you ask her about her

1 relationship with her client and her ability to communicate
2 with her client?

3 THE WITNESS: No. As we were saying, we reached
4 out, but no. I reached out but I did not ask that particular
5 question, no.

6 THE COURT: So, the email exchange was more about
7 gathering records?

8 THE WITNESS: Well, it's something sent to all
9 attorneys when an individual comes in asking if there is any
10 information that they would like us to have and that would be
11 helpful for the purpose of the evaluation, and then we list
12 some things including records, things of that nature.

13 THE COURT: So, the standard initial communication,
14 but you didn't have any particular conversations with
15 Ms. Bianco by email or by telephone with respect to her
16 communications and relationships with Ms. Nelson in this
17 case?

18 THE WITNESS: I do believe, again, there was an
19 email that was initiated regarding the testing that
20 Ms. Bianco had referenced in the previously case, so she
21 actually had reached out and that was a response.

22 THE COURT: That came out when the reports were
23 issued because I recall that conversation?

24 THE WITNESS: Right. You're correct. Other than
25 that initial one and having responded to that, there was no

1 other.

2 Q So, in your assessment, in your opinion you never
3 considered what Dennis' ability was like with her actual
4 attorney because you never sought out that information, is
5 that right?

6 A I'm not sure. Again, so there was a evaluation
7 requested for competency which indicated that there was a
8 concern about Ms. Nelson's competency related capacities. So
9 that would have spurred the evaluation in the first place, so
10 certainly I did understand that there was difficulty in terms
11 of communication.

12 Q But you never asked, you never reached out, you never
13 tried to find out what the communication problems were
14 between Dennis and his present attorney and what was going
15 on, correct?

16 A I did not speak to you directly about it, that is
17 correct.

18 Q So, whatever was going on between Dennis and his
19 attorney wasn't considered in part of your evaluation?

20 A Well, I did speak to the Dennis about her relationship
21 with her attorney.

22 Q And when Dennis told you that all I was interested in
23 was talking about his mother and getting his medical records,
24 you assumed that to be factually correct?

25 A Um, the reason I asked about that is to understand

1 whether there might be some type of problems driven by mental
2 illness that might be interfering with the relationship. So
3 again, specifically there could be some beliefs about the
4 attorney or the process that might interfere. I'm not sure
5 that I thought that everything that he stated about his
6 relationship with you is absolutely true. I do believe that
7 the issue about getting records was probably somewhat
8 consistent with reality; I'm not sure about the mother piece.

9 Q So, part of his explanation to you may not have been
10 based in reality, but you never followed up to see if it was
11 or wasn't true, correct?

12 A I didn't think it was not based in reality; I didn't
13 think that it was driven by mental illness.

14 Q And my last question is, if a person has a delusional
15 disorder, no amount of facts and reasoning can shake their
16 thinking, is that a fair statement?

17 A That is kind of the crux of a delusional disorder, that
18 providing true information does not dissuade them from their
19 beliefs, yes.

20 MS. BIANCO: I have no further questions. Thank
21 you very much, Doctor.

22 THE COURT: Mr. Eurenus, do you have any redirect?

23 MR. EURENIUS: One question, Your Honor.

24 REDIRECT EXAMINATION BY MR. EURENIUS:

25 Q Dr. Kissin, did any of the federal defender's

1 questioning today or any review or rereview of the documents
2 presented to you change your opinion about the conclusion
3 that the defendant is mentally competent to stand trial?

4 A It did not.

5 MR. EURENIUS: No further questions, Your Honor.

6 THE COURT: Let me ask you, Dr. Kissin, and I
7 apologize if you've been asked this and I missed the answer.
8 I know that you have given your opinion with respect to
9 competence. I just want to make sure that I understand. You
10 have diagnosed the defendant as suffering from borderline
11 personality disorder, correct?

12 THE WITNESS: Yes.

13 THE COURT: Is that considered a mental illness?

14 THE WITNESS: It's under the personality disorders
15 portion of the DSM. It is different than mental illness and
16 would not typically or really ever be considered a diagnosis
17 that would drive an opinion of incompetency. It is not a
18 major mental illness. That does not necessarily mean that it
19 does not create problems for the individual or those around
20 them, but it is not considered a major mental illness like
21 psychosis or mood disorder.

22 THE COURT: Is it a diagnosable mental disorder
23 according to the DSM?

24 THE WITNESS: Yes.

25 THE COURT: Are you saying that in your experience

1 no one who is diagnosed with borderline personality disorder
2 would be found not competent to stand trial?

3 THE WITNESS: That is -- well, I'm going to step
4 back. I don't know that I know the entirety of the record
5 and there might be a case that that's happened. That would
6 be incorrect because that is not in the spirit of what would
7 drive incompetency. Again, I'm going out a little bit on a
8 limb in terms of judging what would be a correct, incorrect
9 finding by a judge. Because personality disorders are not
10 something that you would treat with medication typically,
11 although some aspects of them could be treated. Some of the
12 impulsivity and some of the mood components of borderline
13 personality disorder would respond to medication, which is
14 why antipsychotics could actually be very helpful because it
15 kind of tones down some of that reactivity. But these
16 individuals are not unrooted in reality, they are not driven
17 by delusions, not driven by auditory/visual hallucinations,
18 not driven by mood symptoms such as mania. Those are the
19 kind of things that when in the throes of those, competency
20 can be compromised. These are really more skill-based
21 problems and the treatment for them is really providing
22 individuals better skills to interact with other people and
23 their environment.

24 And so it is not the same. Borderline personality
25 disorder is probably one of the more severe personality

1 disorders because it comes with often behaviors that are
2 really problematic, and mood symptoms as well, and they could
3 be overwhelming to individuals around them. But it's not
4 treated in the same way that you would with a mental illness.

5 THE COURT: For somebody who has had a borderline
6 personality disorder for many, many, many years, is it fair
7 to assume that after decades of laboring with this mental
8 illness, that the person is less likely to develop the skills
9 necessary to conform their behavior to appropriate social
10 norms than if you're dealing with somebody who is diagnosed
11 at age twenty, for example?

12 THE WITNESS: So, I would say that someone at age
13 twenty could also have very significant difficulties
14 conforming to social norms, sometimes even more so in some
15 ways than those that might age out, some of those behaviors.
16 In fact, you actually see a decline in some of those
17 behaviors over time just like you would with a lot of
18 behaviors as people age.

19 The reason that it matters that it's skill based
20 versus psychosis or mood based is that it's -- individuals
21 are not -- they don't have a perception of reality that's
22 different in other individuals. They're understanding what
23 their role in that and how do they get their needs met is
24 different. They share a reality but what they interpret in
25 terms of what people mean when they say and what people --

1 their assumptions about what people's motivations are are
2 problematic, are usually off base.

3 And I'm sorry, Your Honor, if I may. The issue
4 with competency is also the capacity is compromised but it's
5 not undermined, it's not an issue of not having the capacity.
6 These individuals' behavior sometimes interferes with their
7 otherwise capacity that they have when they're not behaving
8 in those ways.

9 THE COURT: Okay. I think I understand the
10 theoretical distinction that you're drawing. I think in the
11 application it's harder to understand.

12 If somebody suffers from borderline personality
13 disorder such that, for example, being in stressful
14 situations makes them more prone to behaviors that interfere
15 with the functioning of a trial which interferes with an
16 attorney's ability to consult and confer in a meaningful way
17 with his client, or her client, then I'm not sure that I
18 understand the theoretical distinction. They have the
19 capacity, but if the capacity is so diminished as a result of
20 certain stressors that they can't function, is it reasonable
21 to expect that they're going to be able to get through a
22 trial and assist properly in their defense?

23 And I understand the standard is capacity to assist
24 in their defense, but if we know enough from their history to
25 know that there are certain experiences and certain stressors

1 that are likely to trigger these behaviors, and we know that
2 generally a trial can be a pretty stressful experience, isn't
3 it reasonable to assume that assisting counsel is going to be
4 very difficult?

5 THE WITNESS: That may be true with all personality
6 disorders. For example, antisocial personality disorder,
7 which is another diagnosis, you could sort of say the same
8 thing, an individual might perceive -- may not be willing to
9 work with their attorney because they -- or maybe even a
10 narcissistic personality disorder, they might feel like they
11 know better, they might think their attorney is not good
12 enough, may feel like their attorney is not providing good
13 enough counsel to them because it's not special, they don't
14 feel like they're being treated special. And that certainly
15 might disrupt. In fact, it might completely interfere with
16 their managing a defense, but that would be because of their
17 personality and not because of a mental illness. I'm
18 certainly not saying that it would not create problems. In
19 fact, it could certainly create problems. It's not the type
20 of problem that is conceived as a mental illness.

21 THE COURT: We've been going at this now for
22 started at 1:30 and it's now quarter of four, assuming that
23 clock is right, we've been going at it for a while. The
24 defendant has for the majority of the time had his head on
25 the table. It's very difficult to make any assessment by me

1 as to a degree of engagement, but it's unusual. I do a lot
2 of proceedings, I don't typically have defendants who have
3 their head on the table for most of the proceeding and don't
4 appear to be attentive or engaged.

5 I would like to know, do you make any assessment
6 from that? Do you think there is any significance in what
7 you have observed today?

8 THE WITNESS: Well, I know Ms. Nelson has the
9 capacity to engage because she has done that with me for
10 extended periods of time. I also know that there are times
11 she decides she doesn't want to; she may be bored, she may be
12 disinterested, she might be tired, and so that takes
13 precedence.

14 THE COURT: I guess I'm asking you because you
15 talked to her for far longer than I have, perhaps longer than
16 Ms. Bianco has based on the questions that she's asked, and
17 probably Mr. Eurenus I assume has not spoken to the
18 defendant. So, as the person in the courtroom who may be
19 best able to answer this question, are you able to offer any
20 insight or opinion as to what, if anything, can be drawn from
21 the fact that the defendant has sat with her head on the
22 table for the majority of the proceeding? Do you have an
23 opinion as to whether -- and I accept that she engaged with
24 you, so do you have an opinion that this is malingering? Do
25 you have an opinion that the stress is overwhelming? Do you

1 have an opinion that it is antipsychotic medication that is
2 helping to control behavior but it is making it difficult to
3 pay attention for long periods of time?

4 THE WITNESS: I would say I wouldn't characterize
5 it as malingering. I don't think that Ms. Nelson is trying
6 to behave in way that is not consistent with how she is, I
7 don't think that's part of the picture that I have seen. I
8 think she does have health conditions, she has significant
9 underlying health conditions.

10 THE COURT: It's been a long drive here.

11 THE WITNESS: So, again, I'm not a physician but I
12 know that she does -- she's in poor health and she has poor
13 stamina, and if I had to guess, I would say that it might be
14 some combination of perhaps some physical fatigue and some
15 disengagement because of that, you know. I would probably
16 ask her if I was interviewing her what might be going on, but
17 she's in poor health, separate from the psychiatric. And the
18 medications that you mentioned do have some sedating
19 qualities as well, but I think that a more significant
20 physical problem, the blood condition that she has.

21 THE COURT: But your observations today, have they
22 led you to -- have they caused you to have any questions
23 about any of your opinions today?

24 THE WITNESS: I don't think I really have much
25 information from my observation other than perhaps some

1 fatigue, that I don't think that I received any information
2 that one way or the other in terms of her behavior. And
3 she's, generally I think she's somewhat -- it's not
4 inconsistent with her presentation usually. I think she
5 didn't do a lot at Devens, she spent a lot of time kind of in
6 her room, and so I don't know how long she can last
7 physically, you know, in a day of testimony and such. I
8 think that's what we're seeing. But again, just making an
9 educated guess.

10 THE COURT: Thank you, Dr. Kissin.

11 Okay. Anything else?

12 MR. EURENIUS: No, Your Honor.

13 THE COURT: Dr. Kissin, thank you very much. I
14 appreciate your assistance today and safe travels.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Eurenus, do you have any
17 additional witnesses?

18 MR. EURENIUS: I do not, Your Honor.

19 THE COURT: How about you, Ms. Bianco?

20 MS. BIANCO: No, Your Honor.

21 THE COURT: Ms. Bianco, would you like to put in a
22 post-hearing submission?

23 MS. BIANCO: Yes, I would.

24 THE COURT: And I'm assuming you would like to see
25 the transcript before?

1 MS. BIANCO: I would, please.

2 THE COURT: I'm not sure how it's done in the
3 Northern District in terms of ordering that, but I assume you
4 all know how to do that and if you would please complete
5 whatever orders are necessary. And Ms. Bianco, how much time
6 would you like after the transcript is prepared?

7 MS. BIANCO: Judge, I'm starting a trial on
8 June 13th, so I guess I would ask -- I hate to say this, but
9 I would ask for ninety days because by the time we get the
10 transcript it will be right on heels of my trial and it may
11 take me a few weeks to actually put a submission together.

12 THE COURT: I'm assuming it will take about thirty
13 days for the transcript to be prepared. Mr. Eurenus, would
14 you like to put in a post-hearing submission?

15 MR. EURENIUS: Judge, I'll work with Ms. Bianco. I
16 don't know right now.

17 THE COURT: That's fine. I would like to certainly
18 hear from defense counsel if there is something that she
19 would like me to consider. So ninety days.

20 THE CLERK: August 1st.

21 MR. EURENIUS: Judge, may the witness be excused?
22 I know she's got a flight.

23 THE COURT: Sure, yes.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Good-bye. Have a nice day. Thank you

1 for your time.

2 Sure, how about August 1, how does that work?

3 MS. BIANCO: That's fine, Your Honor.

4 THE COURT: Thank you very much.

5 Mr. Eurenus, anything else?

6 MR. EURENIUS: No.

7 THE COURT: Ms. Bianco, anything else?

8 MS. BIANCO: No. Thank you, Your Honor.

9 THE COURT: I thank everybody for their help today
10 in the Northern District. Everybody has been very gracious
11 and thank you all for your assistance. Nice to see you.
12 This is a nice courtroom.

13 THE CLERK: Court's adjourned.

14 (3:48 p.m.)

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C E R T I F I C A T I O N

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